



Patent  
094996-155036

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the Application of:

**Sanatgar, Homayoun, et al.**

**Serial No.:** 10/601,110

**Filed:** June 23, 2003

**For:** METAL TUBE SUPPORT  
BRACKET AND METHOD FOR  
SUPPORTING A METAL TUBE

)  
) **Group Art Unit:** 3632

)  
) **Examiner:** King, Anita M.

)  
) **Confirmation No.:** 7024

)  
) **Customer No.:** 34026

)  
) **Previous Docket No.** 012903

)  
) **New Docket No.** 094996-155036

)  
) **Attorney Handling Renewed Petition:**

) Paul Shanowski, Senior Attorney

) Office of Petitions  
)

**DECLARATION OF LAWRENCE R. LAPORTE**

Mail Stop Petition  
Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, Lawrence R. LaPorte, hereby declare and state as follows:

1. I am an attorney for Thermal Dynamics, Inc. for this matter. I am registered to practice before the U.S. Patent and Trademark Office, Reg. No. 38,948. This declaration is filed in support of Thermal Dynamics' Renewed Petition For Revival of Application For Patent

**CERTIFICATE OF MAILING (37 C.F.R. §1.10)**

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as 'Express Mail Post Office To Addressee' in an envelope addressed to Mail Stop Petition, Commissioner for Patents, USPTO, P.O. Box 1450, Alexandria, VA 22313-1450.

EM 099782671 US  
Express Mail Label No.

July 18, 2008  
Date of Deposit  
LAI-2952530v1

Yolanda G. Ybuan  
Name of Person Mailing Paper

Yolanda G. Ybuan  
Signature of Person Mailing Paper

Abandoned Unintentionally Under 37 C.F.R. § 1.137(b), filed concurrently herewith.

2. On behalf of Thermal Dynamics, and in response to the requirements set forth in the Decision on Petition dated February 19, 2007, I attempted to contact attorney Gary Appel to determine the facts regarding the failure by him as the attorney of record to respond to the second Office Action mailed on October 1, 2004, which resulted in the abandonment of U.S. Patent Application No. 10/661,110 (the '110 patent application).

3. Beginning in late March, I left several telephone messages for Mr. Appel at his office number. Not having received any response, I wrote a letter to Mr. Appel on April 4, 2008, which was sent via hand delivery and certified mail. The letter, which included a copy of the Decision on Petition, stated as follows (emphasis in original):

VIA HAND DELIVERY  
and CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Gary Appel  
Law Office of Gary Appel  
540 N. Golden Circle Dr., #215  
Santa Ana, CA 92705

Re: Thermal Dynamics  
U.S. Patent Application Serial No. 10/601,110

Dear Mr. Appel:

As you know we represent Thermal Dynamics with respect to United States Patent Application Serial No. 10/601,110 filed by you as attorney of record on June 23, 2003, and the corresponding Petition For Revival of An Application For Patent Abandoned Unintentionally Under 37 C.F.R. 1.137(b) ("Petition For Revival"). The Petition For Revival was denied by the U.S. Patent Office in a Decision on Petition ("Decision") mailed on February 19, 2008, a copy of which is attached for your convenience. The Decision on its face indicates it was mailed to you.

As you may know from the several telephone messages I have left for you, we need your assistance and a statement from you explaining why the above application was allowed to remain abandoned. Specifically, the Decision at page 5 states as follows:

"It must be explained why this application was allowed to remain abandoned for such an extended period of time. Statements from the inventors, the assignee, the attorney of record, and the attorney who submitted this petition must be provided." (Underline emphasis in original; bold emphasis added.)

The Decision further states on page 6 that "[o]n renewed petition, Petitioner will need to ... include [a] statement[] from ... former counsel, if it is to be established that the entire period of delay was unintentional."

Among other things, we seek to learn and report in a renewed petition for revival the reasons this application was allowed to go abandoned, and in particular the nature and length of your illness which you reported to Mr. Hugh Sanatgar by telephone on October 15, 2006. As the Decision makes clear on page 5, petitioner Thermal Dynamics is required to provide a "detailed explanation seeking to excuse delay." As such, your cooperation and statement are necessary to comply with the Patent Office's request and the applicable legal authorities.

We look forward to hearing from you and scheduling a date and time in the near future to discuss this matter and develop the statement necessary for a renewed petition. Please note that our response is due by **April 19, 2008**, and we request to speak with you in advance of that date.

Very truly yours,  
/s/  
Lawrence R. LaPorte

Encl.  
cc: Hugh Sanatgar (via email)  
David A. Randall

A true and correct copy of my letter is attached hereto as Exhibit A.

4. After receipt of my letter, Mr. Appel telephoned me and agreed to meet with me at my firm's offices in Irvine, California. We met in person on April 18, 2008 at approximately 11:00 a.m. for over one hour. Mr. Appel did confirm to me that he was the attorney of record for the '110 patent application and responsible for filing the proper response to the Second Office Action dated September 27, 2007. Mr. Appel further acknowledged that he understood that the '110 application had become abandoned. However, Mr. Appel repeatedly declined to answer or

meaningfully respond to any of my numerous inquiries regarding why the '110 application was abandoned. Mr. Appel also did not meaningfully respond to my repeated questions of why he did not provide the "summary" of Thermal Dynamics' patent cases that he had promised to Mr. Sanatgar in his letter dated September 17, 2006. Mr. Appel further did not meaningfully respond to my repeated requests that he assist in the preparation of his declaration to the Patent Office as required by the Decision sent in my letter to him dated April 4, 2008.

5. During our meeting, Mr. Appel did inform me that during the period of abandonment he was seriously ill and that his illness required him to undergo two surgeries. However, Mr. Appel was unable or unwilling to identify any dates or time periods regarding his illness or surgeries. Mr. Appel did say that during the period of his illness he was incapacitated and unable to perform his professional responsibilities. Based on his comments, indicating the serious and debilitating nature of his illness, it appeared to me that Mr. Appel may have abandoned or neglected his practice and professional responsibilities.

6. When I asked if it was possible to review his files relating the '110 patent application, Mr. Appel did indicate that a review of his own files would allow him to respond to my inquiries, and he offered to do so. Accordingly, I offered several times to accompany Mr. Appel that day (April 18, 2008), or any other day, to his office to assist in the review of his files, however, he declined. Instead, Mr. Appel promised that he would review his files over the weekend of April 19-20, 2008, and respond by the following Monday, April 21, 2008. Notwithstanding several follow-up telephone calls to him, Mr. Appel never did respond.

7. Because he failed to respond, I sent Mr. Appel another letter on April 25, 2008, by both Federal Express and Certified Mail. A true and correct copy of my letter, including the signed receipt, are both attached hereto as Exhibit B. According to the Return Receipt, this letter was delivered and signed for on April 28, 2008. Mr. Appel did not respond to this letter. In view of Mr. Appel's subsequent conduct, I do not believe his offer to review his files to have been a genuine one. Rather, I believe it was an offer made simply to conclude our meeting so that he

could leave.

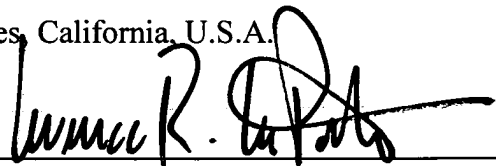
8. I made a third attempt to contact Mr. Appel by mail on May 30, 2008, again requesting his cooperation to provide the requested declaration, to which there has been no response. The FedEx version of this letter is believed to have been delivered no later than Monday, June 2, 2008. The Certified Mail version of the letter was returned to me as "unclaimed" in mid-June. A true and correct copy of my letter and the mailing receipts are attached hereto as Exhibit C.

9. With regard to named-inventor Behnam Akbarian, I am informed he is no longer employed by Thermal Dynamics. I attempted to contact Mr. Akbarian, however, I was unable to locate him. With regard to named-inventor Gary Johnson, I attempted to contact him by telephone in Georgia, however, he did not return my calls. With regard to named-inventor Don Smith, I understand he is located in mainland China on a long term assignment and therefore is not available. With regard to each of these three named-inventors, I understand based upon my communications with Neil Holt and Hodayoun Sanatgar that none of them had any responsibilities for interfacing with Gary Appel or monitoring the status of the '110 patent application.

I declare under penalty of perjury that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United

States Code, and that willful false statements may jeopardize the validity of the application or patent issuing thereon.

Executed this 18 day of July 2008, at Los Angeles, California, U.S.A.

A handwritten signature in black ink, appearing to read "Lawrence R. LaPorte", is written over a horizontal line.

Lawrence R. LaPorte

# JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071-2300

TELEPHONE: 213-489-3939 • FACSIMILE: 213-243-2539

Direct Number: (213) 243-2298  
llaporte@jonesday.com

JP003872  
094996-155001

April 4, 2008

VIA HAND DELIVERY  
and CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Gary Appel  
Law Office of Gary Appel  
540 N. Golden Circle Dr., #215  
Santa Ana, CA 92705

Re: Thermal Dynamics  
U.S. Patent Application Serial No. 10/601,110

Dear Mr. Appel:

As you know we represent Thermal Dynamics with respect to United States Patent Application Serial No. 10/601,110 filed by you as attorney of record on June 23, 2003, and the corresponding Petition For Revival of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b) ("Petition For Revival"). The Petition For Revival was denied by the U.S. Patent Office in a Decision on Petition ("Decision") mailed on February 19, 2008, a copy of which is attached for your convenience. The Decision on its face indicates it was mailed to you.

As you may know from the several telephone messages I have left for you, we need your assistance and a statement from you explaining why the above application was allowed to remain abandoned. Specifically, the Decision at page 5 states as follows:

"It must be explained why this application was allowed to remain abandoned for such an extended period of time. Statements from the inventors, the assignee, the attorney of record, and the attorney who submitted this petition must be provided."  
(Underline emphasis in original; bold emphasis added.)

The Decision further states on page 6 that "[o]n renewed petition, Petitioner will need to ... include [a] statement[] from ... former counsel, if it is to be established that the entire period of delay was unintentional."

Among other things, we seek to learn and report in a renewed petition for revival the reasons this application was allowed to go abandoned, and in particular the nature and length of your illness which you reported to Mr. Hugh Sanatgar by telephone on October 15, 2006. As the Decision makes clear on page 5, petitioner Thermal Dynamics is required to provide a "detailed

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Gary Appel  
April 4, 2008  
Page 2

explanation seeking to excuse delay." As such, your cooperation and statement are necessary to comply with the Patent Office's request and the applicable legal authorities.

We look forward to hearing from you and scheduling a date and time in the near future to discuss this matter and develop the statement necessary for a renewed petition. Please note that our response is due by **April 19, 2008**, and we request to speak with you in advance of that date.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence R. LaPorte", with a stylized flourish at the end.

Lawrence R. LaPorte

Encl.

cc: Hugh Sanatgar (via email)  
David A. Randall





UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE  
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ALEXANDRIA, VA 22313-1450  
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FEB 25 2008

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Gary Appel  
18301 Irvine Boulevard  
Tustin CA 92780

**JONES DAY**  
**PATENT PROSECUTION DEPT. FEB 19 2008**

**OFFICE OF PETITIONS**

In re Application of :  
Homayoun Sanatgar et al. :  
Application No. 10/601,110 : DECISION ON PETITION  
Filed: June 23, 2003 : UNDER 37 C.F.R. § 1.137(B)  
Attorney Docket No.: 012903 :  
Title: METAL TUBE SUPPORT :  
BRACKET AND METHOD FOR :  
SUPPORTING A METAL TUBE :

This is a decision on the petition filed November 21, 2007, pursuant to 37 C.F.R. § 1.137(b)<sup>1</sup>, to revive the above-identified application.

This petition is **DISMISSED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed October 1, 2004, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R.

<sup>1</sup> A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

§ 1.136(a) were requested. Accordingly, the above-identified application became abandoned on January 2, 2005. A notice of abandonment was mailed on April 20, 2005.

Petitioner has included the petition fee, the proper statement of unintentional delay, and an amendment. With the present petition, Petitioner has met requirements (1) and (2) of Rule § 1.137(b). The fourth requirement is not applicable.

Regarding the third requirement, Petitioner has not established that the entire period of delay was unintentional. It is noted that the present petition was not filed until more than two years and seven months had passed since the mailing of the notice of abandonment. It is not clear why the Applicant chose to take no course of action for such a long period of time. It does not appear that any action was taken to further the prosecution of this application, subsequent to the mailing of the notice of April 20, 2005, for more than two years and seven months.

It is equally unclear what, after all of this time, prompted the Applicant to advance the prosecution of this application.

As such, it appears that the Applicant intentionally allowed this application to go abandoned. The extended inaction of the Applicant appears to be intentional.

A discussion follows.

In order for a petition under 37 C.F.R. § 1.137(b) to be granted, the holder of the rights to the application must have unintentionally allowed the application to go abandoned, and a delay resulting from a deliberately chosen course of action on the part of the applicant is not an "unintentional" delay within the meaning of 37 C.F.R. § 1.137(b).

The periods of delay:

There are three periods to be considered during the evaluation of a petition under 37 C.F.R. § 1.137(b):

- (1) the delay in reply that originally resulted in the abandonment;
- (2) the delay in filing an initial petition pursuant to 37 C.F.R. § 1.137(b) to revive the application; and
- (3) the delay in filing a grantable petition pursuant to 37 C.F.R. § 1.137(b) to revive the application.

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) or (2).

As to **Period (1)**, the patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of \$500 or a fee of \$50 **would not be granted where the abandonment or the failure to pay the fee for issuing the patent was intentional** as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), reprinted in 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Commissioner to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 C.F.R. § 1.137(b)(3) provides that a petition under 37 C.F.R. § 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here there is a question whether the initial delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 C.F.R. § 1.137(b). See In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay of more than two years and seven months in resuming prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 C.F.R. § 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional.

Petitioner has included a declaration of facts from the first-named inventor, who has set forth that he "was responsible for interfacing with prior counsel of record in this application<sup>2</sup>," and that he only recently learned of the abandonment of this application.

It is not clear why the non-final Office action of October 1, 2004 was not responded to. It is noted that a statement has been provided from the first-named inventor, however it does not appear that a statement from any of the other inventors, the assignee, the attorney of record, or the attorney who submitted this petition has been submitted.

Any renewed petition must clearly identify the party having the right to reply to avoid abandonment. That party, in turn must explain what effort(s) was made to reply to the outstanding Office action and further, why no reply was filed. If no effort was made to reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). Petitioner should explain why the non-final Office action of October 1, 2004 was not responded to in a timely manner. Statements from the inventors, the assignee, the attorney of record, and the attorney who submitted this petition must be provided.

As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As to **Period (2)**, where the applicant deliberately chose not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 C.F.R. § 1.137(b)<sup>3</sup>.

<sup>2</sup> Declaration of Homayoun Sanatgar, paragraph 3.

<sup>3</sup> See MPEP § 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 C.F.R. § 1.137(b) are clear and unambiguous, and furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 C.F.R. § 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated clear that any protracted delay (here, two years and seven months) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at \*21-\*23.

This application was abandoned for 2 years and seven months prior to the filing of this petition. It is not clear why the inventors, the assignee, and the attorney of record took no action during this time. It is noted that a statement has been provided from the first-named inventor, however it does not appear that a statement from any of the other inventors, the assignee, or the attorney of record has been submitted.

It must be explained why this application was allowed to remain abandoned for such an extended period of time. Statements from the inventors, the assignee, the attorney of record, and the attorney who submitted this petition must be provided.

Moreover, it must be revealed what, after all of this time, prompted the Applicant to advance the prosecution of this application.

Punctuality and Due Diligence:

For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Loudon, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894).

Similarly, an invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R. §§1.181, 182, 183.

The lengthy period of inaction does not appear to be consistent with the requirements of punctuality, due diligence, good faith, and the encouragement of reasonable promptness.

On renewed petition, Petitioner will need to address each of these issues, and include statements from both the Applicant and former counsel, if it is to be established that the entire period of delay was unintentional.

Petitioner is reminded that any statement of facts should be made by one having firsthand knowledge of the facts set forth therein.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. § 1.137(b)". This is not a final agency action within the meaning of 5 U.S.C. § 704.

Thereafter, there will be no further reconsideration of this matter.<sup>5</sup>

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4 For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Loudon, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894). An invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82;

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail<sup>6</sup>, hand-delivery<sup>7</sup>, or facsimile<sup>8</sup>. Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web<sup>9</sup>.

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For Petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at <http://www.uspto.gov/web/forms/sb0122.pdf>.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225<sup>10</sup>. All other inquiries

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281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R. §§1.181, 182, 183.

5 If, on request for reconsideration, Petitioner fails to satisfy the showings burden required: (a) the resulting decision may be one viewed as final agency action; and (b) provisions for reconsideration, such as those at 37 C.F.R. §1.137(e), will not apply to that decision.

6 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

7 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

8 (571) 273-8300- please note this is a central facsimile number.

9 <https://portal.uspto.gov/authenticate/authenticateuserlocalepf.html>

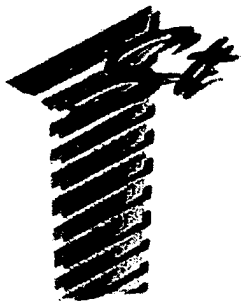
10 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

concerning examination procedures or status of the application  
should be directed to the Technology Center.

/Paul Shanoski/  
Paul Shanoski  
Senior Attorney  
Office of Petitions

cc: David A. Randall  
555 South Flower Street, 50<sup>th</sup> Floor  
Los Angeles, CA 90071





# First Legal Support Services

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		<b>CHARGE REFERENCE</b> 094996-155001			
<b>PICK UP FROM:</b>		<b>DELIVER TO:</b>			
TO SEE: PHONE:		540 N. Golden Circle Dr., #215 Santa Ana, CA 92705 TO SEE: Gary Appel PHONE: (714) 568-0366			
<input type="checkbox"/> SPECIAL <input type="checkbox"/> ASAP (1 Hour) <input type="checkbox"/> RUSH (1 to 2 Hours)		<input checked="" type="checkbox"/> REGULAR (3 to 4 Hours) <input type="checkbox"/> NEXT DAY (By _____)		<input type="checkbox"/> RETURN <input type="checkbox"/> NIGHT / WEEKEND SERVICE	
				Pieces Weight P/U Time	
<b>SPECIAL INSTRUCTIONS</b> PLEASE HAND-DELIVER THE ATTACHED TO GARY APPEL (OR ANYONE FROM HIS OFFICE) BEFORE 3:00 P.M. TODAY. CALL YOLANDA AT EXT. 32534 TO CONFIRM DELIVERY.					
<b>LEGIBLE SIGNATURE</b>		<b>DEL TIME</b>	<b>DRIVER</b>	<b>CHECK NO.</b>	<b>AMOUNT</b>
			1	1	1
			2	2	2

LIABILITY FOR LOSS OR DAMAGE TO ITEMS LIMITED TO \$250.00

MEMBER FIRM - CALIFORNIA ASSOCIATION OF PHOTOCOPIERS AND PROCESS SERVERS  
NATIONAL ASSOCIATION OF PROFESSIONAL PROCESS SERVICE

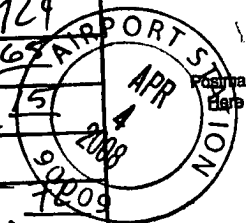
7006 0100 0001 9693 8288

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

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**OFFICIAL USE**

Postage	\$ 9.29
Certified Fee	2.68
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.7209



Sent To Gary Appel  
Street, Apt. No.; 540 N. Golden Circle Dr., #215  
or PO Box No.  
City, State, ZIP+4 Santa Ana, CA 92705

PS Form 3800, June 2002

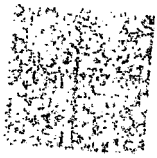
See Reverse for Instructions

CERTIFIED MAIL™



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05/12



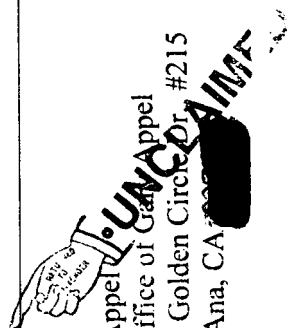
IF NOT DELIVERED IN 5 DAYS RETURN TO:

JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CA 90071-2300

TO

Gary Appel  
Law Office of Gary Appel  
540 N. Golden Circle Dr. #215  
Santa Ana, CA 92703



8/2/08  
N/A

RECEIVED  
JONES DAY





# JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071-2300  
TELEPHONE: 213-489-3939 • FACSIMILE: 213-243-2539

Direct Number: (213) 243-2298  
llaporte@jonesday.com

JP003872  
094996-155001

April 25, 2008

**VIA FEDERAL EXPRESS  
and CERTIFIED MAIL (RETURN RECEIPT REQUESTED)**

Gary Appel  
Law Office of Gary Appel  
540 N. Golden Circle Dr., #215  
Santa Ana, CA 92705

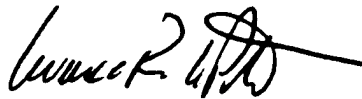
Re: Thermal Dynamics  
U.S. Patent Application Serial No. 10/601,110

Dear Mr. Appel:

This will confirm our meeting last Friday, April 18, 2008 at 11:00 a.m. at the Jones Day office in Irvine. Unfortunately you were unable at that time to answer and respond in any meaningful way to the questions raised by the Board's Decision on Petition ("Decision"). You indicated that you needed to return to your office to review your files. I offered to review the files with you, however, you declined my offer. Instead, you stated that you would respond to my inquiries on Monday, April 21, 2008, after reviewing your files over the weekend. Since that date you have not contacted me or returned any of my telephone calls or voice messages. As you know, time is of the essence in responding to the Decision, and I urgently need to speak with you.

Please contact me immediately so that we may comply with the Decision's requirement that you provide a declaration on any renewed petition to revive.

Very truly yours,



Lawrence R. LaPorte

LRL:ygy  
cc: Hugh Sanatgar (via email)  
David A. Randall

LAI-2945858v1

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465

1000

**FedEx. US Airbill**  
ExpressFedEx Tracking Number **8617 1451 7719**

Sent

1 From **Lawrence R. LaPorte**  
Date **4/25/08** Sender's FedEx Account Number **1203-7120-7**Sender's Name **Lawrence R. LaPorte** Phone **(213) 489-3939**Company **JONES - DAY**Address **335 S FLOWER ST FL 30**City **LOS ANGELES** State **CA** Zip **90071**2 Your Internal Billing Reference **JP003872, 094996-155001**3 To Recipient's Name **Gary Appel** Phone **(714) 568-0366**Company **Law Office of Gary Appel**Recipient's Address **540 N. Golden Dr., #215**

We request delivery to P.O. boxes or P.O. ZIP codes.

Address **Santa Ana** State **CA** Zip **92705****0365144180**

## 4a Express Package Service

☐ FedEx Priority Overnight  
Next business day, 7 AM to 7 PM  
Saturday delivery not available.  
☒ FedEx Standard Overnight  
Next business day, 10 AM to 5 PM  
Saturday delivery not available.☐ FedEx 2Day  
Second business day, 7 AM to 7 PM  
Saturday delivery not available.  
☐ FedEx Express Saver  
Third business day, 7 AM to 7 PM  
Saturday delivery not available.

## 4b Express Freight Service

☐ FedEx 1Day Freight  
Next business day, 7 AM to 7 PM  
Saturday delivery not available.  
☐ FedEx 2Day Freight  
Second business day, 7 AM to 7 PM  
Saturday delivery not available.

Other FedEx services may be available. Select the service you want.

## 5 Packaging

☒ FedEx Envelope  
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## 6 Special Handling

☐ Fragile (Fragile Markings)  
Fragile Markings are required for fragile items.  
☐ Restricted (Restricted Markings)  
Restricted Markings are required for restricted items.  
☐ Hazardous (Hazardous Markings)  
Hazardous Markings are required for hazardous items.

Other special handling services may be available. Select the service you want.

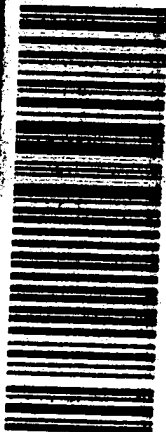
7 Payment **Bill Me**  
☒ Cash  
☐ Receipt  
☐ Third Party  
☐ Credit CardTotal Packages **1** Total Weight **1.00** Total Declared Value **\$ 0.00**8 Residential Delivery Signature Options  
If you require a signature, check One of the following:  
☐ No Signature Required  
☐ Direct Signature  
☒ Indirect SignatureNo Signature Required: Packages may be left without a signature for delivery.  
Direct Signature: Signature of recipient or authorized agent may be required for delivery.  
Indirect Signature: Signature of recipient or authorized agent may be required for delivery.

Rev. Date 10/05/07 P10020-01/08-000 FedEx-PRINTED IN U.S.A.-107

7006 0100 0001 9693 8325

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT

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U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
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For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark  
Here

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Street Apt. No. 540 N. Golden Dr., #215 or PO Box No.	
City, State, ZIP+4 Santa Ana, CA 92705	

PS Form 3800, June 2002

See Back for Instructions



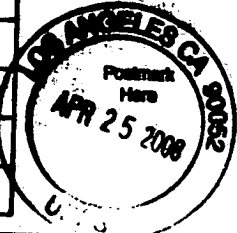
7006 0100 0001 9693 8325

U.S. Postal Service  
**CERTIFIED MAIL - RECEIPT**  
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For delivery information visit our website at [www.usps.com](http://www.usps.com)

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Postage	\$ .41
Certified Fee	2.63
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.21



Sent to **Gary Appel**

Street, Apt. No., or PO Box No. **540 N. Golden Dr., #215**

City, State, ZIP+4 **Santa Ana, CA 92705**

PS Form 3800, June 2002 See Reverse for instructions





# JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071-2300

TELEPHONE: 213-489-3939 • FACSIMILE: 213-243-2539

Direct Number: (213) 243-2298  
llaporte@jonesday.com

JP003872  
094996-155001

May 30, 2008

**VIA FEDERAL EXPRESS  
and REGISTERED MAIL (RETURN RECEIPT REQUESTED)**

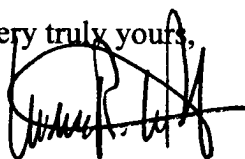
Gary Appel  
Law Office of Gary Appel  
540 N. Golden Circle Dr., #215  
Santa Ana, CA 92705

Re: Thermal Dynamics  
U.S. Patent Application Serial No. 10/601,110

Dear Mr. Appel:

I have not heard from you in response to my letter of April 25, 2008 (attached). As I indicated to you during our meeting on April 18, 2008, Thermal Dynamics intends to file a Renewed Petition to Revive the above application. Pursuant to the requirements of the Decision on Petition, we again request your cooperation for you to provide a detailed declaration with respect to the abandonment of the above application. Please contact me immediately at the above telephone number so that we can arrange another meeting to draft the required declaration. We would appreciate the courtesy of a prompt response by you.

Very truly yours,



Lawrence R. LaPorte

LRL:ygy  
Encl.

cc: Hugh Sanatgar (via email)  
David A. Randall

LAI-2953009v1

ATLANTA • BEIJING • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • FRANKFURT • HONG KONG • HOUSTON  
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SAN DIEGO • SAN FRANCISCO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

# JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CALIFORNIA 90071-2300  
TELEPHONE: 213-489-3939 • FACSIMILE: 213-243-2539

Direct Number: (213) 243-2298  
llaorte@jonesday.com

JP003872  
094996-155001

April 25, 2008

**VIA FEDERAL EXPRESS  
and CERTIFIED MAIL (RETURN RECEIPT REQUESTED)**

Gary Appel  
Law Office of Gary Appel  
540 N. Golden Circle Dr., #215  
Santa Ana, CA 92705

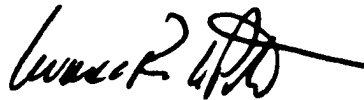
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U.S. Patent Application Serial No. 10/601,110

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Very truly yours,



Lawrence R. LaPorte

LRL:ygy  
cc: Hugh Sanatgar (via email)  
David A. Randall

LAI-2945858v1

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1000

**FedEx. US Airbill**  
Express

8617 1451 7719

1 From **Lawrence R. LaPorte**  
Date **4/25/08** Sender's Facility Accession Number **1203-7120-7**  
Phone **(213) 489-3939**

Company **JONES - DAY**

Address **558 S FLOWER ST FL 50**  
**LOS ANGELES CA 90071**

2 Your Internal Billing Reference **JF003872, 094998-155001**

3 To Recipient's Name **Gary Appel** Phone **714, 568-0366**  
Company **Law Office of Gary Appel**  
Address **540 W. Golden Dr., #215**  
City **Santa Ana CA 92705**

0345144180

4 ☐ Insured ☒ Signature Required ☐ Signature Not Required

5 ☐ Signature Required ☐ Signature Not Required

6 ☐ Signature Required ☐ Signature Not Required

7 ☒ Registered ☐ Registered ☐ Third Party ☐ Credit Card

8 Residential Delivery Signature Options

☐ No Signature Required ☐ Direct Signature ☐ Indirect Signature

☐ Signature Required ☐ Signature Not Required

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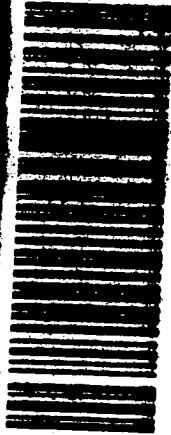
98 ☐ Signature Required ☐ Signature Not Required

99 ☐ Signature Required ☐ Signature Not Required

100 ☐ Signature Required ☐ Signature Not Required

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7006 0100 0001 9693 8325

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Postage	\$
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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark  
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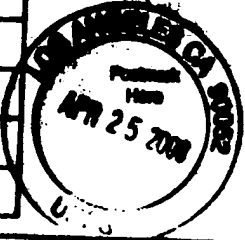
58876 Gary Appel

Street, Apt. No. 340 N. Golden Dr., #215  
or PO Box No.

City, State, ZIP+4 Santa Ana, CA 92705

7006 0100 0001 9693 8325

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
<small>(Domestic Mail Only - No Postage Necessary for Return)</small>	
For delivery, add 1.00 per item. Return to sender if no address.	
<b>OFFICIAL USE</b>	
Postage	0.41
Certified Fee	2.63
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.19



To: Gary Appel	
Street Apt Rm 540 N. Golden Dr., #215	
City State Zip Santa Ana, CA 92705	



464  
1000

# FedEx® US Airbill

Express

FedEx Tracking Number  
8617 1451 7708

1 From Please print and press hard  
Date 5/30/08 Sender's FedEx Account Number 1203-7120-7

Sender's Name Lawrence R. LaPorte Phone (213) 489-3939

Company JONES DAY

Address 535 S FLOWER ST FL 50

City LOS ANGELES

State CA Zip 90071

2 Your Internal Billing Reference JP003872, 094996, 155036

3 To Recipient's Name Gary Appel

Company Law Office of Gary Appel

Address Recipient's 540 N. Golden Circle Dr., #215

City Santa Ana State CA Zip 92705

0365144180



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☐ FedEx 2Day  
Second business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx Express Saver  
Second business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

## 4b Express Freight Service

☐ FedEx 1Day Freight  
Next business day.® Friday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 2Day Freight  
Second business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 3Day Freight  
Third business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 4Day Freight  
Fourth business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 5Day Freight  
Fifth business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 7Day Freight  
Seventh business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 9Day Freight  
Ninth business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 12Day Freight  
Twelfth business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 15Day Freight  
Fifteenth business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 20Day Freight  
Twentieth business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 30Day Freight  
Thirtieth business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 45Day Freight  
Forty-fifth business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 60Day Freight  
Sixtieth business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 90Day Freight  
Ninety business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 120Day Freight  
One hundred twenty business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 150Day Freight  
One hundred fifty business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 180Day Freight  
One hundred eighty business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 210Day Freight  
Two hundred ten business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 240Day Freight  
Two hundred forty business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 270Day Freight  
Two hundred seventy business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 300Day Freight  
Three hundred business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 330Day Freight  
Three hundred thirty business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 360Day Freight  
Three hundred sixty business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

☐ FedEx 390Day Freight  
Three hundred ninety business day. Thursday  
Signature required. Delivery is guaranteed.  
Saturday Delivery is available.

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☐ FedEx Pak

☐ FedEx Box

☐ FedEx Tube

☐ FedEx Other

☐ FedEx Special Handling

☐ FedEx Special Handling

☐ FedEx Special Handling

☐ FedEx Special Handling

☐ FedEx Special Handling

## 6 Special Handling

☐ NOT Available for

☐ FedEx First Overnight

☐ FedEx Priority Overnight

☐ FedEx 2Day

☐ FedEx Express Saver

☐ FedEx 1Day Freight

☐ FedEx 2Day Freight

☐ FedEx 3Day Freight

☐ FedEx 4Day Freight

☐ FedEx 5Day Freight

## 7 Payment

☒ Sender Bill to

☐ Recipient

☐ Third Party

☐ Credit Card

☐ Cash/Check

☐ Other

☐ Bill to

☐ Bill to

☐ Bill to

☐ Bill to

## 8 Residential Delivery Signature Options

☐ No Signature

☐ Required

☐ Signature

☐ Signature

☐ Signature

☐ Signature

☐ Signature

☐ Signature

☐ Signature

☐ Signature

PULL AND RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE. NO POUCH NEEDED

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Gary Appel  
Law Office of Gary Appel  
540 N. Golden Circle Drive  
#215  
Santa Ana, CA 92705

**2. Article Number**

(Transfer from service label)

RA 281 460 067 US

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**
**A. Signature**

X

☐ Agent

☐ Addressee

**B. Received by (Printed Name)**
**C. Date of Delivery**
**D. Is delivery address different from item 1?**

If YES, enter delivery address below:

☐ Yes

☐ No

**3. Service Type**

☐ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

**4. Restricted Delivery? (Extra Fee)**

☐ Yes

Registered No. RA 281 460 067 US

Date Stamp

To Be Completed By Post Office	Reg. Fee \$	Special \$
	Handling Charge \$	Delivery Receipt \$
	Postage \$	Restricted \$
	Received by	

Domestic Insurance

is Limited To

\$25,000; International

Indemnity is Limited

(See Reverse)

To Be Completed By Customer  
(Please Print)  
All Entries Must Be in Ballpoint or Typed

Customer Must Declare  
Full Value \$

- ☐ With Postal Insurance  
☐ Without Postal Insurance

FROM  
Lawrence R. LaPorte  
JONES DAY  
555 So. Flower St., Fiftieth Floor  
Los Angeles, CA 90071-2300  
TO  
Gary Appel  
Law Office of Gary Appel  
540 N. Golden Circle Dr., #215  
Santa Ana, CA 92705

PS Form 3806,  
June 2000

Receipt for Registered Mail

(Customer Copy)

(See Information on Reverse)

RA 281 460 067 US

Label 200, July 1999 (102595) 99-M-1904

L. LAPORTE

**IF NOT DELIVERED IN 5 DAYS RETURN TO:**

# JONES DAY

555 SOUTH FLOWER STREET • FIFTIETH FLOOR • LOS ANGELES, CA 90071-2300

Gary Appel  
Law Office of Gary Appel  
540 N. Golden Circle Dr., #215  
Santa Ana, CA 92705  
949.447.1111

RETURNED TO  
UNCLAIMED

2-2

**SENDER: COMPLETE THIS SECTION**

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540 N. Golden Circle Drive  
#215

**COMPLETE THIS SECTION ON DELIVERY**

### A. Signature

Agent

☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: